



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,168	04/09/2001	Allan J. Lepine	IAM 0498 NA	1328

27752 7590 02/04/2005

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
WINTON HILL TECHNICAL CENTER - BOX 161  
6110 CENTER HILL AVENUE  
CINCINNATI, OH 45224

EXAMINER

CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
----------	--------------

1761

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. Box 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Application Number: 09/829,168  
Filing Date: April 09, 2001  
Appellant(s): LEPINE, ALLAN J.

**MAILED**  
FEB 04 2005  
**GROUP 1700**

\_\_\_\_\_  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed December 22, 2004.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) Status of Claims**

The statement of the status of the claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Invention**

The summary of invention contained in the brief is correct.

**(6) Issues**

The appellant's statement of the issues in the brief is correct.

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

5,709,888	Gil et al	1-1998
5,294,458	Fujimori	3-1994
0,259,713	Meyer (EP, pages 3-4 of translation)	3-1992

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Art Unit: 1761

Claims 1 and 3-5 stand rejected under 35 U.S.C. 102(b)/103(a). This rejection is set forth in a prior Office Action, mailed on October 29, 2003, paragraph No. 3.

Claims 7-9, 11 and 12 stand rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on October 29, 2003, paragraph No. 4.

Claim 6 stands rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on October 29, 2003, paragraph No.5.

Claim 10 stands rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on October 29, 2003, paragraph No.6.

Claims 1 and 9 also stand rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on October 29, 2003, paragraph No.7.

Claims 3-5, 11 and 12 also stand rejected under 35 U.S.C. 103(a)). This rejection is set forth in a prior Office Action, mailed on October 29, 2003, paragraph No. 8.

Claim 6 also stands rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on October 29, 2003, paragraph No. 9.

Claim 10 also stands rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on October 29, 2003, paragraph No. 10.

**(11) Response to Argument**

Appellant's claims are equivalent to feeding a beagle pup its mother's milk since there is no patentable distinction between natural beagle milk and the claimed composition. Each component in the amount claimed by appellant is present in natural

Art Unit: 1761

beagle milk. The manner of producing appellant's artificial milk has not been claimed and thus cannot be relied upon to distinguish over the prior art.

One of ordinary skill in this art would have been motivated to produce artificial beagle milk for the same reason that other artificial food products are produced, i.e. to meet demand if supply of the natural food product is short. Once this artificial milk is produced, it would have been obvious to include any beneficial additives, such as FOS. The FOS of Fujimori is an obvious additive to such milk since FOS improves intestinal health of puppies and reduces the odor of puppies' waste products.

Appellant's remarks regarding Meyer are not convincing. Whereas whey may include components other than protein, as appellant contends based upon page 4888 of the Encyclopedia of Food Science submitted by appellant, the protein itself is composed only of albumin and globulin substances. According to page 4889 of the Encyclopedia, the proteins present in whey are 50% beta lactoglobulin, 25% alpha lactalbumin and 25% other protein. However, the other proteins are composed of albumin and globulin as well, according to page 3, last full paragraph of the Meyer translation. Thus, the albumin-globulin portion of the ratio disclosed on page 4 of the Meyer translation accounts for all components of the whey protein. As a result, appellant's claimed weight ratio is disclosed by Meyer.

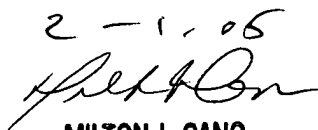
For the above reasons, it is believed that the rejections should be sustained.

Art Unit: 1761

Respectfully submitted,



ARTHUR L. CORBIN  
PRIMARY EXAMINER



MILTON I. CANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

Conferees  
Milton Cano  
Glen Caldarola

INTELLECTUAL PROPERTY DIVISION  
WINTON HILL TECHNICAL CENTER - BOX 161  
6110 CENTER HILL AVENUE  
CINCINNATI, OH 45224

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday-Friday from 10:30 am to 8:00 pm.

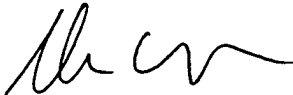
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

Art Unit: 1761

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A. Corbin/dh  
January 25, 2005



Glenn Caldarola  
Supervisory Patent Examiner  
Technology Center 1700